THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.21264 of 2002

DATE: 29.12.2006

Between:

R.Ramesh Kumar and another

…….Petitioners

and

Divisional Cooperative Officer cum
Sale Officer and others

…….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.21264 of 2002

ORDER:

It appears that in the year 1992, the second petitioner obtained a loan from the third respondent bank, which was initially registered under the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the 1964 Act') and later, under the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 (for short 'the 1995 Act') with effect from 19.04.1997. The impugned notice vide L.F.No.H.35/276, dated 19.09.2002, was issued by the first respondent purported to be under Rule 52(11)(e) of the Andhra Pradesh Cooperative Society Rules (for short "the Rules"), calling for auction of house bearing No.3-4-681 belonging to the petitioners.

The petitioners have categorically asserted at para Nos.7, 8 and 9 of the affidavit filed in support of the writ petition that once the society was registered under the 1995 Act, the provisions of the 1964 Act have no relevance and no action could be taken by the respondents under the impugned notice.

Per contra, the respondents have filed counter affidavit asserting that the issue was already decided in W.P.M.P.No.30295 of 1999 in W.P.No.24096 of 1999, dated 30.11.1999, that the proceedings instituted before the competent authorities under the 1964 Act prior to the date of incorporation of the bank under the 1995 Act shall continue

to be in force and shall be adjudicated by the authorities before whom the matters instituted were pending.

Heard both sides.

It is an admitted fact that the Andhra Pradesh Mutually Aided Cooperative Societies Act came into force with effect from 01.06.1995 and the third respondent bank was converted into mutually aided cooperative society with effect from 19.04.1997. A certificate under Section 71(1) of the 1964 Act was obtained by the Society on 23.02.1995 and the same is sought to be executed under the 1964 Act, which has no application. In fact, in view of Section 36 of the 1995 Act, execution proceedings under Chapter X of the 1964 Act have no relevance and are not applicable to the case on hand. In this case, there were no proceedings pending for execution as on the date of registration of the Society under the 1995 Act. Therefore, the execution proceedings could be taken up only under the 1995 Act.

Section 36 of the 1995 Act reads as under:

> **36. Execution of decisions, decrees and orders:-**
>
> In regard to execution of decisions, decrees and orders, all the provisions of Chapter X of the Andhra Pradesh Co-operative Societies Act, 1964 shall *mutatis mutandies* apply to Cooperative Societies registered under this Act, such however, that all references to the Registrar in the said Act shall be construed to be a reference to the Co-operative Tribunal in their application to Co-operative Societies registered under this Act.

In view of the above, the respondents have to approach the Cooperative Tribunal for the purpose of execution of the orders, dated 23.02.1995, passed by the authorities under Section 71(1) of the 1964 Act as they cannot invoke the provisions of Rule 52(11)(e) of the Rules

and auction the schedule property. Therefore, the impugned notice, dated 19.09.2002, issued by the first respondent is liable to be set aside and is accordingly set aside.

However, it is always open for the respondents to invoke the provisions of Section 36 of the 1995 Act and workout their remedies as are available under the law.

With the above observations, the writ petition is allowed. No order as to costs.

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(C.V.RAMULU, J)

29th December, 2006.

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